

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Division 2.1, *Rules for Tax Appeals*,
Chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*,
Chapter 3, *Property Taxes*,
Chapter 4, *Appeals from Actions of the Franchise Tax Board*, and
Chapter 5, *General Board Hearing Procedures***

SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY,
AND ANTICIPATED BENEFITS

Current Law

Adoption of the Rules for Tax Appeals

The State Board of Equalization's (Board's) *Rules for Tax Appeals* (RTA) (Cal. Code Regs., tit. 18, div. 2.1 (§§ 5000-5700)) originally became effective on February 6, 2008. The RTA was originally adopted to provide comprehensive regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board and specifically address public concerns, at the time, regarding the Board's administrative and appellate review processes. (See RTA § 5000.)

Chapter 1 (RTA § 5000) names the RTA, and provides a clear statement of the Board's primary intent for its implementation, which is to improve the Board's relationship with taxpayers and fee payers (hereafter, collectively, taxpayers).

Chapter 2 (RTA §§ 5200-5271) codified the Board's existing practices, at the time, for handling appeals involving revenue-generating tax and fee programs (business taxes and fees), including the Sales and Use Tax, administered by the Board. (See BOE Publication 41, *Taxes and Fees Administered by the California State Board of Equalization*, for a complete list.) Chapter 2 also improved the Board's existing practices by: (1) codifying the Board's policy of accepting untimely petitions for redetermination as administrative protests; (2) clarifying that taxpayers requesting relief have the right to request both an appeals conference and an oral hearing before the Board Members; (3) giving taxpayers and Board staff additional time to prepare briefs; and (4) guaranteeing taxpayers the right to file the last brief.

Chapter 3 (RTA §§ 5310-5345) codified the Board's existing practices, at the time, for handling property tax appeals, including the practice of having the Appeals Division review appeals prior to the Board's consideration. Chapter 3 also provides a more detailed description of each step in the property tax appeals process than the Board's *Rules of Practice* (Cal. Code Regs., tit. 18, 5010-5095), which were repealed and

replaced by the RTA.

Chapter 4 (RTA §§ 5410-5465) restated most of the *Rules of Practice* provisions and codified the Board's existing practices, at the time, for handling appeals from the Franchise Tax Board (FTB). Chapter 4 also improved the Board's existing practices in several ways. For example, chapter 4 added new procedures permitting non-appealing spouses to materially participate in innocent spouse appeals. Chapter 4 additionally provided notice of the criteria for the imposition of frivolous appeal penalties and established new procedures to help resolve jurisdictional issues. Chapter 4 also added new procedures for holding discretionary prehearing conferences that can be used to better develop the facts and issues raised in complicated or complex appeals when requested by the appellant or the FTB or when deemed necessary either by the Board's Appeals Division or the Board Members.

Chapter 5 (RTA §§ 5510-5576) restated most of the *Rules of Practice* provisions and codified the Board's existing practices, at the time, for conducting oral Board hearings and deciding appeals in all of the Board's appeals processes. Chapter 5 also made several important improvements over the *Rules of Practice*, including:

- Clarifying that all appellants have the right to request an oral hearing before the Board Members;
- Describing the conflict-of-interest provisions applicable to the Board;
- Permitting individual Board Members to adopt their own dissenting and concurring opinions when the Board adopts a precedential Formal Opinion or Memorandum Opinion;
- Codifying the Board's longstanding policy permitting all interested persons to communicate with the Board Members at any time;
- Making oral hearings before the Board Members more understandable to the public; and
- Protecting trade secrets and information that could be used for identify theft from disclosure.

Chapter 6 incorporated the Board's previously adopted regulations governing Taxpayer Bill of Rights reimbursement claims (RTA §§ 5600-5605) and the Board's previously adopted regulation governing the publication of annotations derived from legal rulings of counsel (RTA § 5700).

2010 Amendments to the RTA

At the time that the RTA was adopted, the Board had delegated authority to appropriate Board staff to grant or deny claims for refunds of specified taxes and fees, unless the refunds exceeded \$50,000, and that delegation of authority was codified in RTA Regulations 5237 and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*. The Board subsequently changed the delegation of authority so that it applied to claims for refunds that did not exceed \$100,000, and the Board adopted amendments to RTA Regulations 5237 and 5266 to

incorporate the change, which became effective on February 19, 2010, including amendments that changed the name of Regulation 5237 to “Board Approval Required for Refunds Over \$100,000.” No other substantive amendments have been made to the RTA since it was originally adopted.

Assembly Bill No. 2323 & Revenue and Taxation Code section 40

The Governor approved Assembly Bill No. (AB) 2323 (Stats. 2012, ch. 788) on September 29, 2012, and AB 2323 added section 40 to the Revenue and Taxation Code (RTC) effective January 1, 2013. Section 40 provides as follows:

- (a)(1) The board shall publish on its Internet Web site a written formal opinion, a written memorandum opinion, or a written summary decision for each decision of the board in which the amount in controversy is five hundred thousand dollars (\$500,000) or more, within 120 days of the date upon which the board rendered its decision. (2) A decision of the board shall not include consent calendar actions taken by the board.
- (b) Each formal opinion, memorandum opinion, and summary decision as described in subdivision (a) shall include all of the following: (1) Findings of fact. (2) The legal issue or issues presented. (3) Applicable law. (4) Analysis. (5) Disposition. (6) Names of adopting board members.
- (c) (1) A board member may submit a dissenting opinion setting forth his or her rationale for disagreeing with the memorandum opinion or formal opinion. (2) A board member may submit a concurring opinion setting forth the board member’s rationale for agreeing with the result reached in the memorandum opinion or formal opinion, if different than the rationale set forth in the memorandum opinion or formal opinion. (3) A dissenting opinion and a concurring opinion shall be published in the same manner as prescribed in subdivision (a) for a formal opinion or memorandum opinion.
- (d) A formal opinion or memorandum opinion adopted by the board may be cited as precedent in any matter or proceeding before the board, unless the opinion has been depublished, overruled, or superseded. A summary decision may not be cited as precedent in any matter or proceeding before the board.

Specific Purpose of, Problem Intend to be Addressed by, Necessity for, and Anticipated Benefits from the Proposed Amendments to the RTA to Incorporate and Implement, Interpret, and Make Specific RTC Section 40’s Publication Requirements

There is currently a problem within the meaning of Government Code section 11346.2, subdivision (b)(1), because the Board adopted the RTA to provide comprehensive regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board, but the RTA does not incorporate the provisions of RTC section 40, which generally apply to the Board’s administrative and appellate review processes. Therefore, the Board discussed AB 2323 during its meeting

on December 19, 2012, and directed staff to address the problem by drafting proposed amendments to the RTA to implement, interpret, and make specific the publication requirements of RTC section 40, and incorporate the new publication requirements into the RTA. The Board also directed staff to meet with interested parties to discuss the proposed amendments prior to presenting them to the Board.

After meeting with the interested parties, Board staff prepared a Chief Counsel Memorandum and distributed it to the Board Members and interested parties on May 29, 2013. The Chief Counsel Memorandum recommended that the Board propose to:

- Move the definitions for the terms “Summary Decision” and “Formal Opinion” from Regulations 5311, *Definitions*, 5451, *Summary Decisions*, and 5452, *Formal Opinions*, in chapters 3 and 4 of the RTA to Regulation 5511, *Definitions*, in chapter 5 of the RTA, and add a consistent definition for the term “Memorandum Opinion” to Regulation 5511 so that all of these terms, which are used in RTC section 40, are consistently defined in one place;
- Add definitions to RTA Regulation 5511 to clarify that all three types of documents are “written opinions,” Summary Decisions are “nonprecedential opinions” and Memorandum Opinions and Formal Opinions are “precedential opinions”; and
- Add definitions to RTA Regulation 5511 for the commonly used terms “Appeal,” “Board hearing,” and “nonappearance matter.”

The Chief Counsel Memorandum recommended that the Board propose amendments to RTA Regulation 5551, *Voting and Decisions*. The amendments revise subdivision (a) so that it more clearly explains the timing of the Board’s vote to decide an appeal. The amendments added a new subdivision (b) to RTA Regulation 5551 to explain that the “Board may, but is not required to, adopt a written opinion to decide an appeal. The Board may vote to decide an appeal by adopting a written opinion containing its decision, or the Board may vote to decide an appeal without adopting a written opinion at the time of the vote.” New subdivision (b) also explains the Board’s discretion to direct staff to prepare written opinions, the procedures for ensuring that the Board adopts written opinions when required by RTC section 40, the procedures for the adoption of precedential opinions prepared at the Board’s direction, the authority to cite written opinions in proceedings before the Board, and the confidentiality of written opinions, respectively. The amendments also renumber current subdivision (b) of RTA Regulation 5551, regarding dissenting and concurring opinions, as subdivision (c), replace the phrase “Memorandum Opinion or Formal Opinion” with the term “precedential opinion” in renumbered subdivision (c)(1) and (2) and with the term “opinion” in renumbered subdivision (c)(1)(A) and (B), and replace the word “decision” with the word “opinion” in renumbered subdivision (c)(1)(B).

The Chief Counsel Memorandum recommended that the Board propose to adopt new RTA Regulation 5552, *Publication*, to incorporate the remaining provisions of RTC section 40 into the RTA. RTA Regulation 5552 specifically:

- Clarifies that for purposes of RTC section 40, “the Board’s decision on an appeal is rendered on the date that the Board’s vote to decide the appeal becomes final”;
- Clarifies the meaning of the phrase “amount in controversy” as used in RTC section 40, subdivision (a)(1); and
- Clarifies that RTC section 40’s publication requirements apply to decisions of the Board acting as a collective body in open session to resolve a pending dispute regarding an issued assessment of tax or fee or refund of tax or fee to a taxpayer, or the reallocation of local or district tax, that has been scheduled and appears as a contested matter before the Board on a Board meeting notice, including Board hearing and nonappearance matters, except for nonappearance consent calendar action items (as provided in RTC § 40, subd. (a)(1)).

The Chief Counsel Memorandum recommended that the Board propose to change the name of RTA Regulation 5573, *Waiver of Confidentiality*, to “Confidentiality.” The memorandum recommended that the Board amend subdivision (a) of RTA Regulation 5573 to further emphasize the broad waiver of confidentiality associated with the filing of an appeal from the actions of the FTB with the Board. The memorandum also recommended that the Board propose to add a new subdivision (f) to RTA Regulation 5573 to clarify that, “[e]ven in the absence of a waiver, there is no right to confidentiality as to relevant information that the Board or Board staff includes in a written opinion that is required to be published pursuant to [RTA Regulation] 5552.”

The Chief Counsel Memorandum recommended that the Board propose to add a new subdivision (g) to RTA Regulation 5574, *Request for Portion of Oral Hearing Conducted During Closed Session*, to avoid potential confusion by clarifying that nothing in Regulation 5574 shall prevent the Board from publishing a written opinion when required under RTC section 40. In addition, the memorandum recommended that the Board propose additional amendments throughout RTA Regulations 5573 and 5574 so that they consistently use the terms “Board hearing,” “Summary Decision,” “Hearing Summary,” “appeal,” and “nonappearance matter” from RTA Regulation 5511.

Finally, the Chief Counsel Memorandum recommended that the Board propose to change the title of article 5 of chapter 5 of the RTA from “Voting and Decisions” to “Voting, Decisions, and Opinions” to better reflect that the article contains RTA Regulations 5551 and 5552 regarding the adoption and publication of written opinions.

The Board Members considered the May 29, 2013, Chief Counsel Memorandum during the Board’s June 11, 2013, meeting, and unanimously voted to propose the above described amendments to the RTA. The Board determined that the amendments are reasonably necessary for the specific purpose of clearly and concisely implementing, interpreting, and making specific RTC section 40, and incorporating section 40’s new publication requirements into the RTA to ensure that the RTA provides comprehensive regulations governing the Board’s administrative and appellate review processes and eliminate potential problems the Board might have had complying with the new publication requirements. The Board anticipates that the Board and interested parties, including taxpayers, will benefit from the proposed amendments because they clearly and

concisely explain how the Board will implement and comply with RTC section 40's publication requirements, and increase transparency in government.

The adoption of the proposed amendments to the RTA to incorporate and implement, interpret, and make specific the publication requirements of RTC section 40 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to current RTA Regulation 5311, 5451, 5452, 5511, 5551, 5573, or 5574, or newly proposed RTA Regulation 5552.

Specific Purposes of, Problems Intend to be Addressed by, Necessity for, and Anticipated Benefits from the Additional Proposed Amendments to the RTA

In addition, there is a problem within the meaning of Government Code section 11346.2, subdivision (b)(1), because there are other regulations in RTA chapters 2 through 4 that are not consistent with the amendments being made to chapter 5 of the RTA to incorporate and implement, interpret, and make specific RTC section 40's publication requirements. And, there are several other historical clean-up and housing keeping problems (within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) with the RTA that have been identified by interested parties and Board staff since the RTA became effective in 2008, which are discussed in more detail below. Therefore, on December 19, 2012, the Board also directed staff to address these problems by drafting additional amendments to RTA chapters 2 through 5, and directed staff to meet with interested parties to discuss the amendments prior to presenting them to the Board.

In accordance with the Board's direction, Board staff recommended in the May 29, 2013, Chief Counsel Memorandum that the Board propose additional amendments to the RTA, which staff had previously discussed with interested parties. The additional amendments are intended to make RTA chapters 2 through 4 consistent with the amendments being made to RTA chapter 5 to incorporate and implement, interpret, and make specific RTC section 40's publication requirements, and address the historical clean-up and housekeeping problems in RTA chapters 2 through 5.

Additional Proposed Amendments to RTA Chapter 2

Article 1 of chapter 2 of the RTA, which is entitled "Application of Chapter 2 and Definitions," does not contain any definitions and RTA Regulation 5200, *Application of Chapter 2 and Definitions*, which is in article 1, does not need to expressly provide that the definitions in RTA Regulations 5511 and 5512, *Construction*, apply to chapter 2 because the definitions in those regulations apply to chapter 2 pursuant to the provisions of Regulations 5511 and 5512. Therefore, to address these problems, the May 29, 2013, Chief Counsel Memorandum recommended that the Board propose to delete the references to "definitions" from the titles of article 1 and RTA Regulation 5200 and repeal the provisions of RTA Regulation 5200 that refer to RTA Regulations 5511 and 5512.

RTA Regulation 5200 would be more concise if the Board replaced the regulation's

references to the various types of appeals that are provided for in chapter 2 with the term “appeal” as proposed to be defined in the amendments to RTA Regulation 5511 (discussed above). Furthermore, RTA Regulation 5200 would read more clearly if the citations to the various tax and fee laws listed in the regulation were reformatted as parenthetical citations. Therefore, the Chief Counsel Memorandum recommended that the Board propose to amend RTA Regulation 5200 to make those clarifying changes.

The Chief Counsel Memorandum recommended that the Board propose to amend RTA Regulation 5212, *Contents of Petitions for Redetermination, and Supporting Arguments and Evidence*, to make the regulation’s text more consistent with the terms “taxpayer” and “Board hearing” as defined or proposed to be defined in RTA Regulation 5511.

The Chief Counsel Memorandum recommended that the Board propose to amend RTA Regulations 5215, *Scope of Petitions for Redetermination Filed Under Hazardous Substances Tax Law*, 5215.4, *Scope of Petitions for Redetermination Filed Under Covered Electronic Waste Recycling Fee*, and 5230, *Persons Who May File a Claim for Refund; Limitations on Certain Claims*, to update the references to the California Department of Toxic Substance Control. The memorandum recommended that the Board propose to amend RTA Regulations 5215 and 5230 to replace the references to the “State Director of Health Services” and “State Department of Health Care Services” with references to the “California Department of Public Health” due to statutory changes. The memorandum also recommend that the Board propose to replace the terms “petitioner” and “claimant” with the term “taxpayer” throughout RTA Regulations 5215 and 5230, subdivision (c)(3), and amend Regulation 5230, subdivisions (b) and (e) so that they are more consistent with the Motor Vehicle Fuel Tax Law and Water Code, respectively. Furthermore, the memorandum recommended that the Board propose to amend RTA Regulation 5215.6, *Scope of Petition for Redetermination Filed Under Water Rights Fee Law*, to make it more consistent with the provisions of Water Code section 1537, and propose to amend RTA Regulation 5224, *Review of Petition for Redetermination of Jeopardy Determination*, to make it more consistent with Regulations 5215, 5215.4, and 5215.6.

The Chief Counsel Memorandum recommend that the Board propose to clarify the procedures for acknowledging petitions for redetermination in RTA Regulation 5217, *Assignment and Acknowledgment of Petitions for Redetermination*, and make the regulation more concise.

The Chief Counsel Memorandum recommend that the Board propose to clarify the procedures for accepting untimely petitions as administrative protests in RTA Regulation 5220, *Premature or Untimely Petition May Be Treated as an Administrative Protest*, and make the text of Regulation 5220 more consistent with the terms “taxpayer,” “Board hearing,” and “appeal” as defined or proposed to be defined in RTA Regulation 5511.

RTA Regulations 5218, *Review of the Petition by the Assigned Section*, and 5219, *Mailing the Summary Analysis and Scheduling the Appeals Conference*, prescribe the procedures for the initial review of a petition for redetermination. RTA Regulation 5235,

Action on Claim for Refund, explains the types of actions the Department may take when initially reviewing a claim for refund. RTA Regulations 5264, *Conducting the Appeals Conference; Parties to the Appeals Conference; Nature of the Appeals Conference; Failure to Appear*, and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*, prescribe the procedures that apply when the Appeals Division subsequently conducts an appeals conference, and issues a Decision and Recommendation regarding an appeal. Some taxpayers have been confused and sometimes frustrated by the process in RTA Regulation 5218 for referring petitions to another office for further investigation and comment. Some taxpayers have been confused by the provisions in RTA Regulations 5218 and 5235 requiring taxpayers to request appeals conferences and Board hearings or confirm prior requests for appeals conferences and Board hearings in order to obtain an appeals conference. Some taxpayers have been confused by the provisions in RTA Regulation 5264 regarding the submission of additional arguments and evidence to the Appeals Division. And, some taxpayers have been confused by the provisions in RTA Regulation 5266 requiring them to file requests for reconsideration and requests for Board hearings to continue to contest Decisions and Recommendations, and the procedures in RTA Regulation 5266 for the preparation of Supplemental Decisions and Recommendations. Therefore, to address these problems, the Chief Counsel Memorandum recommend that the Board propose to amend RTA Regulations 5218, 5219, 5235, 5264, and 5266 to clarify all of these appeal processes and procedures, including requiring the Appeals Division to acknowledge the receipt of requests for reconsideration, and explaining that the Appeals Division may request additional information from the parties that may be relevant to the preparation of a Supplemental Decision and Recommendation. The amendments are intended to help taxpayers keep track of their appeals better and clearly understand when they are required to take additional actions to continue their appeals after receiving adverse recommendations from Board staff.

RTA Regulation 5237 currently prescribes procedures for the Board's approval of the Departments' recommendations on claims for refunds. RTA Regulation 5266 currently prescribes the procedures for the Board's approval of the Appeals Division's recommendations, and both Regulations 5237 and 5266 prescribe the requirements for making the Departments' and the Appeals Division's recommendations a public record when required by statute. However, there is no regulation that prescribes the procedures for the Board's approval of the Department's recommendations on petitions for redetermination or administrative protests, Regulations 5237 and 5266 are no longer fully consistent with all of the Board's policies requiring Board approval of the Departments' and Appeals Division's recommendations, and the regulations' provisions for public records could be more concise. Therefore, to address these problems, the Chief Counsel Memorandum recommended that the Board propose amendments to update the provisions in RTA Regulations 5237 and 5266 regarding Board approval and public records. The memorandum recommended that the Board propose to move the provisions regarding Board approval and public records in RTA Regulation 5266 to RTA Regulation 5267, *Issuance of Post Appeals Conference Notices*. The memorandum recommended that the Board propose to add similar provisions for Board approval to RTA Regulation 5218, which provides for the review of petitions for redetermination and administrative

protests (as provided in RTA § 5220, subd. (b)). The memorandum also recommended that the Board propose to clarify the procedures for the issuance of post appeals conference notices in RTA Regulation 5267 so that they are entirely consistent with the Board's current practices.

RTA Regulations 5216, *Filing Petitions for Redetermination*, 5222, *Persons Who May File a Petition for Redetermination of a Jeopardy Determination*, 5225, *Persons Who May File an Application for Administrative Hearing; Manner of Filing; and Consolidation with Petition*, 5233, *Filing Claims for Refund*, 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief (Sales and Use Tax, Including State-Administered Local Sales, Transactions, and Use Taxes)*, 5250, *Filing and Reviewing Claims and Inquiries Regarding Incorrect or Non-Distribution of Local and District Taxes*, and 5262, *Requests to Reschedule or Postpone Appeals Conference*, prescribe the procedures for filing petitions for redetermination, petitions for redetermination of jeopardy determinations, applications for administrative hearings, claims for refund, requests for innocent spouse relief, petitions for reallocation of local and district tax, and requests to reschedule and postpone appeals conferences, respectively. These regulations all explain that the Board encourages the use of electronic means for the filing of appeals and appeals related documents, but the regulations do not provide any specific guidance on how to file these documents via electronic means. As a result, Board staff has determined that the best way for the Board to continue to encourage the use of electronic means for the filing of documents related to appeals is to be more specific about how such documents may be filed via electronic means, where currently available, and provide taxpayers with the current contact information for the Appeals and Data Analysis Branch of the recently reorganized Property and Special Taxes Department. Therefore, the Chief Counsel Memorandum recommended that the Board propose amendments to RTA Regulations 5216, 5222, 5225, 5233, 5240, 5250, and 5262 in order to delete the language encouraging the use of electronic means for filing such documents. The memorandum also recommended that the Board propose amendments to add more specific information regarding the filing of documents to RTA Regulations 5216, 5222, 5225, 5233, 5240, and 5262, and the Appeals and Data Analysis Branch's contact information to Regulation 5216. However, the Board intends to provide more electronic services through the "eServices" link on its website at www.boe.ca.gov, and it is possible that the eServices link may provide additional instructions for the electronic filing of these documents in the future. Therefore, the Chief Counsel Memorandum did not recommend deleting the current provisions of RTA Regulations 5216, 5222, 5225, 5233, 5240, and 5262 permitting documents to be filed in accordance with instructions on the Board's website.

In addition, Board staff determined that California Code of Regulations, title 18, division 2, sections (Regulations) 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, already prescribe the procedures for filing petitions for reallocation of local and district tax, and the Chief Counsel Memorandum recommended that the Board propose amendments to RTA Regulation 5250 so that it simply cross-references the provisions for filing such petitions in Regulations 1807 and 1828. Furthermore, Board staff is aware that some

taxpayers are confused by the provisions for deferring and postponing appeals conferences in RTA Regulation 5262, and, to address this problem, the Chief Counsel Memorandum recommended that the Board propose amendments to clarify RTA Regulation 5262 by explaining the differences between deferrals and postponements and clearly providing the procedures applicable to requests for deferrals and postponements.

Moreover, RTA Regulation 5240 provides for the filing of requests for innocent spouse relief under the Sales and Use Tax Law; however, taxpayers may also file requests for innocent spouse relief under the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law. Therefore, the Chief Counsel Memorandum recommended that the Board propose amendments to RTA Regulation 5240 so that it provides for the filing of requests for innocent spouse relief under all of these laws and propose amendments to RTA Regulations 5240, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*, so that they all cross-reference the applicable provisions of Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, which are applicable to requests for innocent spouse relief filed under the additional tax and fee laws.

RTA Regulation 5247, *Authority to Grant Relief Due to Reasonable Reliance on Written Advice and Contents of Requests for Relief Due to Reasonable Reliance on Written Advice*, incorporates and cross-references provisions in Regulation 1705, *Relief from Liability*, and Regulation 4902, *Relief from Liability*. Therefore, the Chief Counsel Memorandum recommended that the Board propose amendments to RTA Regulation 5247 to make it fully consistent with the provisions of Regulations 1705 and 4902.

Board staff understands that the RTA does not cross-reference the Board's current regulations pertaining to Cigarette and Tobacco Products Licensing Act appeals and petitions for the recovery of seized cigarette and tobacco products. Therefore, to address the omission, the Chief Counsel Memorandum recommended that the Board propose amendments to add a new article 5.5 to chapter 2 of the RTA and add new RTA Regulations 5255, *Cigarette and Tobacco Products Licensing Act Appeals*, and 5256, *Petitions for Recovery of Seized Cigarette and Tobacco Products*, to new article 5.5 to cross-reference the Board's current regulations pertaining to Cigarette and Tobacco Products Licensing Act appeals.

A Board hearing is a taxpayer's opportunity to appear before the Board and present oral arguments regarding issues of fact and law relevant to the taxpayer's appeal. Board staff understands that it is common for taxpayers with business tax and fee appeals, whether represented or not, to submit briefs to the Board during the week prior to and on the day of their Board hearings. Staff also understands that the Board Members now generally prefer to consider all the written arguments submitted by these taxpayers prior to the start

of their Board hearings, rather than reject untimely briefs under the RTA. Therefore, the Chief Counsel Memorandum recommended that the Board propose to amend subdivision (g) of RTA Regulation 5270, *Requirements for Briefs; Briefing Schedule; Non-Party Briefs; Additional Briefing*, to make it consistent with the Board's current practice and explain that the Board may, but is not required to, accept untimely briefs at Board hearings regarding appeals subject to RTA chapter 2. The memorandum also recommended that the Board propose to amend RTA Regulation 5270 to clarify the introductory language in subdivision (a), make subdivision (b) cross-reference the identical filing provisions in Regulation 5570, *Mailing Address*, of chapter 5 of the RTA, rather than fully restate the filing provisions, and delete an unnecessary reference to RTA Regulation 5264 from subdivision (b).

On April 22, 2013, Board staff received an email from Ms. Victoria Katz, Rules Attorney for Aderant. In the email, Ms. Katz said that several of the regulations in RTA chapter 2 "include 15 or 30-day deadlines for taxpayers to act without specifying the triggering event for the respective period," and she requested that Board staff recommend amendments to clarify the triggering events. As a result, the Chief Counsel Memorandum recommended that the Board propose additional amendments to the RTA to clarify the deadlines in RTA Regulations 5218, subdivisions (e) through (h), 5235, subdivision (c), 5264, subdivision (d)(1), and 5267, subdivision (c)(3).

Finally, staff discussed the appeals conference process with Mr. Joseph Vinatieri of Bewley, Lasseben & Miller, LLP, and agreed to address two housekeeping issues (or problems) he identified by recommending that the Board propose to amend Regulation 5266 so that it requires the Appeals Division to notify the parties when the Appeals Division is required to or has decided to issue a Supplemental Decision and Recommendation, and requires the Appeals Division to issue a Supplemental Decision and Recommendation within 90 days after the submission of any additional information the Appeals Division needs to prepare the document. Therefore, the Chief Counsel Memorandum recommended that the Board propose to include these provisions in subdivision (d) of RTA Regulation 5266.

During staff's discussion with Mr. Vinatieri, he also indicated that he felt that the 30-day deadline for the Department to submit a request for reconsideration in RTA Regulation 5266, subdivision (c) is not being sufficiently enforced because the Appeals Division is inclined to exercise its discretion to issue a Supplemental Decision and Recommendation when an untimely request for reconsideration raises issues or provides evidence that the Appeals Division has determined that it needs to address. Mr. Vinatieri suggested that Regulation 5266 be amended to prohibit the Appeals Division from exercising such discretion when a Department files an untimely request for reconsideration, unless there is a high probability that the information in the request is so material to the appeal that it would change the Appeals Division's prior recommendation or recommendations. Board staff thoroughly considered Mr. Vinatieri's suggested standard, but did not agree to recommend that the Board impose such a standard because:

- RTC section 7081 provides that "the purpose of any tax proceeding between the

State Board of Equalization and a taxpayer is the determination of the taxpayer's correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the State Board of Equalization may inquire into and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer's liability." And, Board staff believes that RTC section 7081 often requires the Appeals Division to consider and prepare Supplemental Decisions and Recommendations to respond to information submitted by taxpayers in untimely requests for reconsideration that would not satisfy the standard suggested by Mr. Vinatieri. Therefore, staff does not believe that it would be consistent with RTC section 7081 to impose such a standard on information submitted by taxpayers, and staff does not agree that it would be consistent, appropriate, or fair to only impose the standard on the Departments;

- The Appeals Division's core function is to provide relevant, accurate, and up to date information, analysis, and conclusions to the Board. And staff believes that precluding the Appeals Division from addressing potentially relevant information, unless there is a high probability that the information would actually change the outcome of the appeal, would compromise the quality and integrity of the advice the Appeals Division provides to the Board;
- A standard limiting the Appeals Division's discretion would be problematic to enforce in situations where the Appeals Division and a party disagree about the materiality of information; and
- The Appeals Division rarely exercises its discretion to issue a Supplemental Decision and Recommendation when an untimely request for reconsideration is filed by a Department.

Additional Proposed Amendments to RTA Chapter 3

Board staff determined that the provisions of subdivision (a) of RTA Regulation 5311 duplicate the introductory language in RTA Regulation 5511. Staff also noticed that there are two separate definitions for the term "County-Assessed Properties Division" in Regulation 5311. Therefore, the May 29, Chief Counsel Memorandum recommended that the Board propose to address these problems by deleting subdivision (a) from RTA Regulation 5311, combining the definitions for the County-Assessed Properties Division in Regulation 5311, and making minor formatting changes to the regulation.

RTA Regulation 5322, *Information Available to Assesseees; Assessment Factor Hearings*, provides that the Board generally holds Assessment Factor Hearings during its February meeting in Sacramento. However, the Board conducts a Board meeting in Sacramento during January or February, but not both, during some years, and, in years when the Board does not conduct a meeting in Sacramento during February, the Board will hold the Assessment Factor Hearings during its January meeting. Therefore, the Chief Counsel Memorandum recommended that the Board propose to amend RTA Regulation 5322 to provide that the Board generally conducts Assessment Factor Hearings at the Board's "January or February meeting in Sacramento."

RTA Regulation 5323.6, *Submission of Petition*, currently requires taxpayers to submit

10 copies of petitions for reassessment of unitary or nonunitary values and correction of allocated values, and petitions for reassessment of private railroad car values, or, alternatively, to submit a compact disk containing an electronic copy. However, the State-Assessed Properties Division is now able to accept any electronic copy of a petition in lieu of 10 hard copies, not just an electronic copy on a compact disk. In addition, Regulation 5323.6 instructs taxpayers to file their petitions in accordance with RTA Regulation 5335, *Submission of Petitions, Briefs, and Related Documents*, and then Regulation 5335 further cross-references the filing procedures in chapter 5 of the RTA. Therefore, the Chief Counsel Memorandum recommended that the Board propose to amend RTA Regulation 5323.6 so that it no longer requires 10 hard copies of a petition that is submitted electronically, and propose to amend RTA Regulations 5323.6 and 5335 so that they both similarly explain how to file documents electronically, by hand delivery, and by mail and both directly cross-reference the Board Proceedings Division's contact information in Regulation 5570 (as proposed to be amended below). Further, the memorandum recommended that the Board also propose to amend RTA Regulations 5324, *Timeliness of Petition*, 5332, *Time of Filing of Application*, 5332.6, *Submission of Application and Board-Appraised Property*, 5333, *Time for Filing of Petitions*, 5333.6, *Submission of Petitions*, 5334, *Time for Filing of Petition*, 5334.6, *Submission of Petition*, and 5336.5, *Perfecting a Petition*, to make the regulations' filing provisions consistent with the proposed amendments to RTA Regulations 5323.6 and 5335 and the regulations' terms consistent with the definitions in RTA Regulation 5511. Furthermore, the memorandum recommended that the Board propose minor grammatical changes to RTA Regulations 5323.8, *Duplicate Petitions*, 5333.4, *Contents of Petition*, and 5334.4, *Contents of the Petition*.

The contents of a "Hearing Summary" or "Summary Decision" prepared for a property tax appeal are currently prescribed in the definitions for those terms set forth in RTA Regulation 5311. As part of staff's (previously discussed) recommendation to delete the definitions for those terms from Regulation 5311, Board staff determined that it was more appropriate to prescribe the contents of a Hearing Summary or Summary Decision prepared for a property tax appeal in subdivision (a) of RTA Regulation 5325.6, *Prehearing Review of All Other Petitions*, which currently provides for the preparation of both types of documents. Therefore, the Chief Counsel Memorandum recommended that the Board propose to amend RTA Regulation 5325.6, subdivision (a) to incorporate the provisions prescribing the contents of a Hearing Summary or Summary Decision for a property tax appeal, which are currently in RTA Regulation 5311.

There are generally four types of property tax appeals, which are specified by RTA Regulation 5310, *Application of Chapter*:

1. Petitions for reassessment of unitary and nonunitary assessed value and escaped or excessive assessment of state-assessed properties (including petitions for abatement of penalty), petitions for correction of assessment allocation, and petitions for reassessment of private railroad car value;
2. Applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements under subdivision (g) of section 11 of article XIII of

- the California Constitution;
3. Petitions objecting to the County-Assessed Properties Division's findings of ineligibility for an organizational clearance certificate under section 254.6 of the RTC, denials of claims for supplemental clearance certificates under RTC section 214, subdivision (g), and denials of claims for the veterans' organization exemption under RTC section 215.1; and
 4. Petitions filed with the Board by county assessors under Government Code section 15640 et seq.

RTA Regulation 5345, *Finality of Board Action; Written Findings and Decision*, currently provides that the Board's decision on a property tax appeal is final, that the Board will not reconsider or rehear such a decision, and that the Board may only modify such a decision to correct a clerical error. The provisions of RTA Regulation 5345 track the provisions of California Code of Regulations, title 18, division 1, section (Property Tax Rule) 326, *Reconsideration and Rehearing*, which similarly provide that a county board's decision on a property tax appeal is final and that a county board will not reconsider or rehear a property tax appeal, except to correct a clerical error or when its decision was entered due to the taxpayer's failure to appear at the county board's hearing. Therefore, the provisions of RTA Regulation 5345 continue to appear to staff to be appropriate for applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements under subdivision (g) of section 11 of article XIII of the California Constitution because these are essentially appeals in which the Board reviews a county property tax assessment in a similar manner as a county board. In addition, the provisions of RTA Regulation 5345 appear to staff to continue to be required for petitions for reassessment of unitary or nonunitary values and correction of allocated values, which the Board must decide by December 31 of each year and petitions for reassessment of private railroad car values, which the Board must decide by January 31 each year, as explained in RTA Regulation 5327.4, *Oral Hearings - Scheduling of Hearings*.

However, Board staff was not able to find a sufficient reason to continue the Board's current policy regarding the finality and reconsideration of petitions objecting to the County-Assessed Properties Division's findings of ineligibility for an organizational clearance certificate, denial of a claim for a supplemental clearance certificate, or denial of a claim for the veterans' organization exemption, and petitions filed with the Board by county assessors under Government Code section 15640 et seq. Therefore, the Chief Counsel Memorandum recommended that the Board propose to amend RTA Regulation 5345 so that the Board's decisions on these types of petitions become "final 30 days after the date notice of the Board's decision is mailed to the petitioner, unless the petitioner files a Petition for Rehearing in accordance with the procedures provided in chapter 5 of [the RTA] within that 30-day period." The memorandum also recommended that the Board propose to amend RTA Regulation 5561, *Petition for Rehearing*, in chapter 5 of the RTA so that its provisions for filing petitions for rehearing apply to these types of petitions.

Additional Proposed Amendments to RTA Chapter 4

RTA Regulation 5421, *Methods for Delivery of Written Documents and Correspondence*, prescribes the procedures for filing documents with regard to an appeal from the FTB. The regulation explains that the Board encourages the use of electronic means for the filing of appeals and appeals related documents, but the regulation does not provide any specific guidance on how to file documents via electronic means. As a result, Board staff has determined that the best way for the Board to address this issue (or problem) and continue to encourage the use of electronic means for the filing of documents related to appeals is to be more specific about how such documents may be filed via electronic means, where currently available. Therefore, the May 29, 2013, Chief Counsel Memorandum recommended that the Board propose to amend Regulation 5421 in order to delete the language encouraging the use of electronic means for filing such documents and add more specific information regarding the filing of documents in appeals from the FTB. However, the Board intends to provide more electronic services through the “eServices” link on its website at www.boe.ca.gov, and it is possible that the eServices link may provide additional instructions for the electronic filing of these documents in the future. Therefore, the memorandum did not recommend deleting the current provisions of Regulation 5421 permitting documents to be filed in accordance with instructions on the Board’s website.

Subdivision (e) of RTA Regulation 5435, *Additional Briefing*, requires the Board Chair to be promptly notified about requests for additional briefing in appeals from the FTB. However, staff has found that it is more appropriate to promptly notify the Chief of Board Proceedings regarding such requests and allow the Chief of Board Proceedings to contact the Board Chair if necessary. Therefore, the Chief Counsel Memorandum recommended that the Board propose to amend subdivision (e) of Regulation 5435 to refer to the Chief of Board Proceedings instead of the Board Chair. The memorandum also recommended that the Board propose to replace the reference to Appeals Staff with a reference to the Appeals Division in subdivision (a) of Regulation 5435.

Subdivision (a) of RTA Regulation 5444, *Hearing Summary*, defines the term “Hearing Summary” and prescribes the contents of hearing summaries prepared for appeals from the FTB. Board staff has determined that the definition is unnecessary because RTA Regulation 5511 already defines the term “Hearing Summary.” Therefore, the Chief Counsel Memorandum recommended that the Board propose to delete subdivision (a) of RTA Regulation 5444, move the provisions prescribing the content of hearing summaries to the end of the first paragraph in current subdivision (b), renumber the first paragraph of current subdivision (b) as subdivision (a), and reformat the second paragraph of current subdivision (b) as new subdivision (b).

RTC section 19047 requires the Board to hear and determine appeals from the FTB and notify the parties of its determination. When the Board does not adopt a written opinion for an appeal from the FTB, Board staff has prepared a “Letter Decision” for the parties in accordance with RTA Regulation 5450, *Letter Decisions*, which contains a short explanation of the Board’s decision in the parties appeal. While drafting the recommended amendments to RTA Regulation 5551 (discussed above), staff determined

that the Board's current practice of referring to these notices as "Letter Decisions" might create additional, unwarranted confusion regarding the differences between decisions and written opinions. Therefore, to address this problem, the Chief Counsel Memorandum recommended that the Board propose to repeal RTA Regulation 5450 and propose to adopt new RTA Regulation 5453, *Notice of Board's Determination*, which will provide for the preparation of a notice of determination, rather than a Letter Decision, when the Board does not adopt a written opinion for an appeal from the FTB.

During its review of RTA Regulations 5451 and 5452, Board staff determined that subdivisions (a) of Regulations 5451 and 5452 will no longer be necessary if the Board proposes to add definitions for the terms "Summary Decision" and "Formal Opinion" to RTA Regulation 5511 in accordance with staff's recommendations (discussed above). Board staff determined that the provisions of subdivision (c) of RTA Regulation 5451 and subdivision (d) of RTA Regulation 5452 regarding the date of adoption of a Summary Decision or Formal Opinion will no longer be necessary if the Board proposes to address the same subject matter by making the amendments staff recommended to RTA Regulation 5551 (discussed above). Board staff also determined that the provisions of subdivision (d) of RTA Regulation 5451 and subdivision (f) of RTA Regulation 5452 regarding the ability to cite a Summary Decision or Formal Opinion will no longer be necessary if the Board proposes to address the same subject matter by making the amendments staff recommended to RTA Regulation 5551 (discussed above). Therefore, the Chief Counsel Memorandum recommended that the Board propose to delete these unnecessary subdivisions from RTA Regulations 5451 and 5452. The memorandum also recommended that the Board propose to renumber the remaining subdivisions in RTA Regulations 5451 and 5452, and add provisions to make the regulations consistent with the provisions of RTA Regulation 5551 as proposed to be amended and RTA Regulation 5552 as proposed to be added.

FTB staff indicated that additional amendments to chapter 4 of the RTA might be needed to ensure that the parties to an appeal from the FTB understand when the time to file a petition for rehearing starts and when the Board's decision on an appeal from the FTB becomes final. Therefore, the Chief Counsel Memorandum recommended that the Board propose to:

- Replace the references to the word "decision" with references to the word "determination" in RTA Regulations 5460, *Finality of Decision*, and 5463, *Decisions on Petitions for Rehearing*, to make the regulations more consistent with the phrasing of RTC section 19047 and to further aid FTB staff in distinguishing written opinions from "determinations" on appeals from the FTB; and
- Add language to RTA Regulation 5460, subdivision (a), explaining when the Board's determination on an appeal from the FTB becomes final in situations where the determination is held in abeyance under staff's recommended amendments to RTA Regulation 5551 (discussed above).

Board staff also understands that there has been some historic confusion about how many petitions for rehearing a taxpayer may submit with regard to a single appeal, including an

appeal from the FTB. Therefore, to address the confusion, the Chief Counsel Memorandum recommended that the Board propose to add provisions to RTA Regulation 5460, subdivision (c) to incorporate the Board's existing policy with regard to appeals from the FTB, which is that "no party may file a Petition for Rehearing in response to a Decision on Petition for Rehearing or the Board's vote to determine an appeal after a rehearing." Furthermore, the memorandum recommended that the Board propose to add language to subdivision (c) of RTA Regulation 5562, *Recommendation on Petition for Rehearing*, to incorporate the Board's existing policy with regard to other types of appeals, which is that a taxpayer may not file a petition for rehearing in response to the Board's decision to deny a prior petition for rehearing in the same appeal.

Finally, the Chief Counsel Memorandum recommended that the Board also propose to delete unnecessary language from the definition of "Decision on Petition for Rehearing" in RTA Regulation 5463, subdivision (a) and make minor clarifying amendments to RTA Regulation 5463, subdivision (c).

Additional Amendments to RTA Chapter 5

RTA Regulation 5510, *General Application of Chapter 5*, currently provides that chapter 5 of the RTA applies to Board hearings under specified tax and fee laws. However, chapter 5 already contains some provisions, such as RTA Regulation 5522.6, *Notice of Board Hearing and Response*, that are applicable to the submission of appeals as nonappearance matters. Furthermore, the May 29, 2013, Chief Counsel Memorandum recommended that the Board propose a number of amendments that will add additional references to nonappearance matters to RTA chapter 5, including defining the term "nonappearance matter" in RTA Regulation 5511 (as discussed above). Therefore, the Chief Counsel Memorandum also recommended that the Board propose to amend the title of RTA chapter 5 and subdivisions (a) and (b) of RTA Regulation 5510 so that it is clear that RTA chapter 5 applies to all the types of appeals submitted to the Board for decision under the tax and fee laws specified in subdivision (a) of RTA Regulation 5510, not just appeals scheduled for a Board hearing. In addition, the memorandum recommended that the Board propose amendments to clarify the citations to the tax and fee laws specified in RTA Regulation 5510, subdivision (a), including adding a separate reference and citation to the Fee Collection Procedures Law and clarifying that the Hazardous Substances Tax Law is applicable to appeals of the Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee.

RTA Regulation 5512, *Construction*, defines commonly used terms, including "must," "may," "will" and "should." Board staff does not believe that the regulation's definition for the word "will" is correct in the context of the RTA because the definition indicates that the word "does not signify a mandatory duty," but staff believes that the term "will" is often used to signify a mandatory duty in the context of the RTA. Furthermore, Board staff does not believe that it is necessary to define such commonly used terms as "must," "may," and "should" specifically because they are so commonly used. Therefore, the Chief Counsel Memorandum recommended that the Board propose to delete RTA Regulation 5512 in its entirety.

RTA Regulation 5522.8, *Dismissal, Deferral, and Postponement*, provides procedures for the dismissal, deferral, and postponement of appeals. However, Board staff believes that it is unnecessary for the regulation to refer to both deferrals and postponements because the terms essentially have the same meaning in the context of RTA Regulation 5522.8, which is to put something off until a later time. Therefore, the Chief Counsel Memorandum recommended that the Board propose to delete all of the references to deferrals from RTA Regulation 5522.8 and just leave the references to postponements.

In addition, Board staff understands that there has been confusion as to the meaning of RTA Regulation 5522.8, subdivision (b)(3)'s provisions providing for postponements due to pending civil or criminal litigation. In particular, some taxpayers have suggested that the provision requires an appeal to be postponed if pending litigation may have "any" bearing on the appeal whatsoever; however, the provision is intended to give the Chief Counsel discretion to postpone an appeal if the Chief Counsel determines that pending litigation is likely to have a material bearing on the appeal and that the Board should wait to decide the appeal until after the Board knows the outcome of the litigation. Therefore, the Chief Counsel Memorandum recommended that the Board propose to clarify the provisions of RTA Regulation 5522.8, subdivision (b)(3) accordingly. Further, Board staff is not aware of any need to notify the Board when an appeal from the FTB is postponed as a result of a pending bankruptcy proceeding, and the memorandum recommended that the Board propose to delete the requirement from RTA Regulation 5522.8, subdivision (b)(4). Furthermore, Board staff understands that there has been some confusion regarding the meaning of the provision in RTA Regulation 5522.8, subdivision (c) regarding the Chief Counsel's authority to grant additional postponements for extreme hardship because the provision incorrectly cross-references subdivision (a). Therefore, the memorandum recommended that the Board propose to delete the reference to subdivision (a) from RTA Regulation 5522.8, subdivision (c). Finally, the memorandum recommended that the Board propose minor amendments throughout RTA Regulation 5522.8 to make the regulation more clear and make the regulation's terminology more consistent with RTA Regulation 5511 as proposed to be amended.

Board staff understands that electronic presentations are becoming increasingly more common and that people are regularly requesting permission to make electronic presentations during their Board hearings. Therefore, the Chief Counsel Memorandum recommended that the Board propose to add a new subdivision (f) to RTA Regulation 5523.6, *Presentation of Evidence or Exhibits*, to provide procedures allowing for the use of electronic presentations at Board hearings. The procedures only permit materials to be presented electronically if the Board has sufficient equipment to allow electronic presentations, and the procedures require materials to be submitted at least five days prior to a Board hearing so that staff has sufficient time to make sure the materials are ready to be electronically presented at the Board hearing. In addition, the memorandum recommended that the Board propose clarifying amendments to RTA Regulation 5523.6 to delete the reference to "Exhibits" from the title of the regulation because exhibits are not referred to in the regulation, revise the phrasing of the second sentence in subdivision (a) and the second sentence in subdivision (b), make the regulation's terminology more

consistent with RTA Regulation 5511 as proposed to be amended, and replace the word “refute” with the word “contest” in subdivision (d).

The Board requires that a taxpayer’s petition for rehearing be signed by the taxpayer or the taxpayer’s authorized representative to ensure that the petition is authentic. Therefore, the Chief Counsel Memorandum recommended that the Board propose to clarify the requirements for filing a petition for rehearing by adding this requirement to subdivision (a) of RTA Regulation 5561. Board staff has also determined that it is unnecessary for RTA Regulation 5561 to provide procedures for filing petitions for rehearing because RTA Regulation 5570 already provides procedures for filing documents during the Board hearing process, which are substantially similar to the procedures in RTA Regulation 5561. Therefore, the memorandum recommended that the Board propose to delete the filing provisions from RTA Regulation 5561, subdivision (b) and replace them with a cross-reference to the filing provisions in RTA Regulation 5570. In addition, Board staff understands that the Board Proceedings Division gives taxpayers 30 days to complete timely filed submissions which are intended as petitions for rehearing, but do not satisfy all the requirements of RTA Regulation 5561, subdivision (a). Therefore, the memorandum recommended that the Board propose to clarify the current provisions in RTA Regulation 5561, subdivision (c) regarding the review of submissions that are intended as petitions for rehearing, and add paragraphs (4) through (6) to RTA Regulation 5561, subdivision (c) to incorporate the Board Proceedings Division’s current practice of giving taxpayers time to complete timely filed submissions, clarify that the Board Proceedings Division will notify the taxpayer if its submission is ultimately rejected, and explain that a taxpayer may only file one petition for rehearing with regard to the same appeal (as previously discussed).

When a taxpayer files a timely petition for rehearing, the Board has discretion to revise its decision on the taxpayer’s appeal with or without granting a rehearing. As a result, there are situations where the Appeals Division may recommend that the Board revise its decision on an appeal based on information presented in a taxpayer’s petition for rehearing, but still recommend that the Board deny the taxpayer’s request for a rehearing after revising its decision. Therefore, the Chief Counsel Memorandum recommended that the Board propose to add this procedure to RTA Regulation 5562, subdivision (a) to avoid potential confusion. Board staff also understands that there is some confusion as to how the Board decides whether to grant or deny a petition for rehearing and how that decision affects the finality of the Board’s decision in the appeal to which the petition relates. Therefore, to address this problem, the memorandum recommended that the Board propose to amend RTA Regulation 5562, subdivision (c) to more clearly explain the options the Board has for deciding a petition for rehearing, how the Board’s decision to choose each option affects the underlying appeal to which the petition relates, and when the Board’s decision in the underlying appeal will become final.

Furthermore, Board staff determined that RTA Regulation 5563, *Rehearings*, will no longer be necessary if the Board makes staff’s recommended amendments to RTA Regulation 5562 (discussed above) because RTA Regulation 5562 will cover all of the same subject matter that RTA Regulation 5563 currently covers after the amendments.

Therefore, the Chief Counsel Memorandum recommended that the Board propose to repeal RTA Regulation 5563.

Finally, Board staff has determined that the best way for the Board to continue to encourage the use of electronic means for the filing of documents related to appeals is to be more specific about how such documents may be filed via electronic means, where currently available. Therefore, the Chief Counsel Memorandum recommended that the Board propose to amend RTA Regulation 5570 to delete the first sentence of subdivision (a), which encourages the use of electronic means for the filing of documents related to Board hearings, and update the Board Proceedings Division's contact information so that it includes the division's current email address and fax number where the division receives documents related to Board hearings. However, staff understands that the Board intends to provide more electronic services through the "eServices" link on its website at www.boe.ca.gov and it is possible that the eServices link may provide additional instructions for the electronic filing of documents related to Board hearings in the future. Therefore, Board staff did not recommend and still does not recommend deleting the current provisions of RTA Regulation 5570 permitting documents to be filed in accordance with instructions on the Board's website.

June 11, 2013, Board Meeting

During the June 11, 2013, Board meeting, the Board Members also unanimously voted to propose the additional amendments to RTA chapters 2 through 5 recommended in the May 29, 2013, Chief Counsel Memorandum and discussed above. The Board determined that the amendments are reasonably necessary for the specific purposes of making RTA chapters 2 through 4 consistent with the amendments being made to RTA chapter 5 to incorporate and implement, interpret, and make specific RTC section 40's publication requirements, and addressing the historical clean-up and housekeeping problems in RTA chapters 2 through 5 described above.

The Board anticipates that the Board and interested parties, including taxpayers, will benefit from the additional proposed amendments to RTA chapters 2 through 5 described above because the amendments:

- Avoid potential confusion by making RTA chapters 2 through 4 consistent with the amendments being made to RTA chapter 5 to incorporate and implement, interpret, and make specific RTC section 40's publication requirements;
- Address the historical clean-up and housekeeping problems described above, and
- Increase transparency in government by providing more detailed explanations of the Board's administrative and appellate review processes.

The adoption of the additional proposed amendments to RTA chapters 2 through 5 described above is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to current RTA Regulation 5200, 2512, 5215, 5215.4, 5215.6, 5216, 5217, 5218, 5219, 5220, 5222, 5224, 5225, 5230, 5233, 5235, 5237, 5240, 5241, 5242, 5247, 5250, 5262, 5264, 5266, 5267, 5270, 5311,

5322, 5323.6, 5323.8, 5324, 5325.6, 5332, 5332.6, 5333, 5333.4, 5333.6, 5334, 5334.4, 5334.6, 5335, 5336.5, 5345, 5421, 5435, 5444, 5450, 5451, 5452, 5460, 5463, 5510, 5512, 5522.8, 5523.6, 5561, 5562, 5563, or 5570, or newly proposed RTA Regulation 5255, 5256, or 5453.

DOCUMENTS RELIED UPON

The Board relied upon the May 29, 2013, Chief Counsel Memorandum referred to above, the attachments to the memorandum, and the comments made during the Board's discussion of the memorandum during its June 11, 2013, meeting in deciding to propose the adoption of the amendments to RTA chapters 2 through 5 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to RTA chapters 2 through 5 described above at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments to the RTA at this time because the Board determined that the proposed amendments are reasonably necessary for all the reasons set forth above.

On June 11, 2013, the Board also considered Mr. Vinatieri's suggestion, discussed above, that RTA Regulation 5266 be amended to prohibit the Appeals Division from exercising its discretion to issue a Supplemental Decision and Recommendation when a Department files an untimely request for reconsideration, unless there is a high probability that the information in the request is so material to the appeal that it would change the Appeals Division's prior recommendation or recommendations. However, the Board did not agree to impose such a standard based upon information in the May 29, 2013, Chief Counsel Memorandum and staff's comments, during the meeting, which indicate that:

- RTC section 7081 provides that the purpose of any tax proceeding between the Board and a taxpayer is the determination of the taxpayer's correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the Board may inquire into and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer's liability. And, RTC section 7081 often requires the Appeals Division to consider and prepare Supplemental Decisions and Recommendations to respond to information submitted by taxpayers in untimely requests for reconsideration that would not satisfy the standard suggested by Mr. Vinatieri. Therefore, it would be inconsistent with RTC section 7081 to impose such a standard on information submitted by taxpayers, and it would not be consistent, appropriate, or fair to only impose the standard on the Departments;
- The Appeals Division's core function is to provide relevant, accurate, and up to date information, analysis, and conclusions to the Board. Precluding the Appeals Division from addressing potentially relevant information, unless there is a high probability that the information would actually change the outcome of the appeal,

would compromise the quality and integrity of the advice the Appeals Division provides to the Board;

- A standard limiting the Appeals Division's discretion would be problematic to enforce in situations where the Appeals Division and a party disagree about the materiality of information; and
- The Appeals Division rarely exercises its discretion to issue a Supplemental Decision and Recommendation when an untimely request for reconsideration is filed by a Department.

The Board did not reject any reasonable alternatives to the proposed amendments to RTA chapters 2 through 5 discussed above that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(6) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

Proposed Amendments to the RTA to Incorporate and Implement, Interpret, and Make Specific RTC Section 40's Publication Requirements

Nonappearance matters may be scheduled for decision on the Board's adjudicatory or consent calendars. Prior to the enactment of AB 2323, Board staff generally prepared a Summary Decision for an appeal from the FTB or a property tax appeal if the appeal was scheduled to be decided as a nonappearance matter on the Board's adjudicatory calendar. However, Board staff generally prepared a Final Action Summary for a business tax or fee appeal scheduled to be decided as a nonappearance matter on the Board's adjudicatory calendar.

Also, prior to the enactment of AB 2323, Board staff did not generally prepare a Summary Decision or Formal Opinion for an appeal from the FTB or a Summary Decision or Memorandum Opinion for a property tax appeal or business tax or fee appeal scheduled for a Board hearing, unless the Board directed staff to do so. Further, prior to the enactment of AB 2323, the Board did not regularly direct staff to prepare Summary Decisions, Formal Opinions, or Memorandum Opinions for appeals scheduled for Board hearings, and the Board only adopted written opinions for appeals scheduled for Board hearings if the Board decided it was necessary.

AB 2323 added section 40 to the RTC effective January 1, 2013, to impose new publication requirements on the Board. Specifically, RTC section 40, subdivision (a)

requires the Board to “publish on its Internet Web site a written formal opinion, a written memorandum opinion, or a written summary decision for each decision of the board [except for decisions on nonappearance consent calendar items] in which the amount in controversy is five hundred thousand dollars (\$500,000) or more, within 120 days of the date upon which the board rendered its decision.” And, RTC section 40, subdivision (b) requires that each formal opinion, memorandum opinion, and summary decision required to be adopted in accordance with subdivision (a) include all of the following: (1) findings of fact; (2) the legal issue or issues presented; (3) applicable law; (4) analysis; (5) disposition; and (6) the names of the adopting Board Members.

As such, the addition of section 40 to the RTC imposed additional compliance costs on the Board to ensure that Board staff prepares and the Board actually adopts a Summary Decision, Formal Opinion, or Memorandum Opinion for every appeal decided by the Board, in which the amount in controversy is five \$500,000 or more, except for appeals decided as nonappearance consent calendar items. This includes, ensuring that, beginning January 1, 2013, Board staff begins to prepare and the Board actually begins to adopt:

- A Summary Decision or Memorandum Opinion for each business tax or fee nonappearance adjudicatory calendar item, in which the amount in controversy is five \$500,000 or more; and
- A Summary Decision, Formal Opinion, or Memorandum Opinion for each Board hearing item, in which the amount in controversy is five \$500,000 or more.

However, the addition of section 40 to the RTC did not impose any compliance costs on individuals or businesses because section 40’s provisions only relate to the publication of the Board’s decisions.

The proposed amendments to the RTA to incorporate and implement, interpret, and make specific RTC section 40’s publication requirements (discussed above) eliminate potential problems the Board might have had complying with RTC section 40’s new publication requirements by ensuring that Board staff prepares and the Board actually adopts a Summary Decision, Formal Opinion, or Memorandum Opinion for every appeal decided by the Board, in which the amount in controversy is five \$500,000 or more, except for appeals decided as nonappearance consent calendar items. The proposed amendments do not impose additional compliance costs on the Board that were not imposed by the enactment of RTC section 40, and the proposed amendments do not impose any costs on individuals or businesses. Furthermore, the Board anticipates that the Board and interested parties, including individuals and businesses, will benefit from the proposed amendments because they clearly and concisely explain how the Board will implement and comply with RTC section 40’s publication requirements, and increase transparency in government. However, the proposed amendments will not provide a monetary benefit.

Therefore, based upon all the facts discussed above, the Board has determined that the adoption of the proposed amendments to the RTA to incorporate and implement, interpret, and make specific RTC section 40’s publication requirements will neither

create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, the RTA does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to the RTA to incorporate and implement, interpret, and make specific RTC section 40's publication requirements will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to the RTA to incorporate and implement, interpret, and make specific RTC section 40's publication requirements will not have a significant adverse economic impact on business.

The proposed amendments to the RTA to incorporate and implement, interpret, and make specific RTC section 40's publication requirements may affect small business.

Additional Proposed Amendments to the RTA

The additional proposed amendments discussed above make RTA chapters 2 through 4 consistent with the amendments being made to RTA chapter 5 to incorporate and implement, interpret, and make specific RTC section 40's publication requirements. The additional proposed amendments also address the historical, procedural, clean-up and housekeeping problems in RTA chapters 2 through 5 described above.

The additional proposed amendments to RTA Regulations 5345 and 5561 codify new procedures giving appellants the option to file petitions for rehearing with respect to appeals described in RTA Regulation 5310, subdivision (a)(3) or (4). However, the new procedures in RTA Regulations 5345 and 5561 do not require appellants to file petitions for rehearing with regard to appeals described in RTA Regulation 5310, subdivision (a)(3) or (4), and only explain that an appellant that chooses to file a petition for rehearing must identify some Board-recognized grounds for granting a rehearing in the appellant's petition. Therefore, the proposed amendments to RTA Regulations 5345 and 5561 do not impose any costs on individuals or businesses, and they minimize the expenses that individuals or businesses may choose to incur by filing a petition for rehearing with respect to appeals described in RTA Regulation 5310, subdivision (a)(3) or (4) in the future.

The rest of the additional proposed amendments to the RTA clarify, make more concise, further explain, or cross reference administrative and appellate review processes that are already codified in the Board's regulations. As examples, the additional proposed amendments clarify the procedures for reviewing petitions for redetermination and administrative protests in RTA Regulation 5218, the procedures for reviewing claims for refund in RTA Regulations 5235 and 5237, the procedures for conducting appeals conferences in RTA Regulations 5235 and 5237, the procedures for conducting assessment factor hearings in RTA Regulation 5322, and the procedures for filing

appeals-related documents in RTA Regulations 5216, 5222, 5225, 5233, 5240, 5262, 5270, 5323.6, 5332.6, 5333.6, 5334.6, 5335, 5421, and 5570. The additional proposed amendments make RTA Regulation 5250 much more concise. The additional proposed amendments to RTA Regulations 5218, 5237, and 5267 further explain when Board staff's recommendations to grant petitions for redetermination, administrative protests, and claims for refund are subject to Board approval, and explain the Board approval processes. And, the additional proposed amendments adding Regulations 5255 and 5256 to the RTA cross reference the Board's current regulations pertaining to Cigarette and Tobacco Products Licensing Act appeals and petitions for the recovery of seized cigarette and tobacco products. Therefore, the rest of the additional proposed amendments to the RTA do not impose new compliance costs on individuals and businesses.

Furthermore, the Board anticipates that the Board and interested parties, including individuals and businesses, will benefit from the additional proposed amendments to RTA chapters 2 through 5 described above because the amendments:

- Avoid potential confusion by making RTA chapters 2 through 4 consistent with the amendments being made to RTA chapter 5 to incorporate and implement, interpret, and make specific RTC section 40's publication requirements;
- Address the historical, procedural clean-up and housekeeping problems described above, and
- Increase transparency in government by providing more detailed explanations of the Board's administrative and appellate review processes.

However, the proposed amendments to the Board's administrative and appellate review process will not provide a monetary benefit.

Therefore, based upon all of the facts discussed above, the Board has determined that the adoption of the additional proposed amendments to RTA chapters 2 through 5 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, the RTA does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the additional proposed amendments to RTA chapter 2 through 5 will not affect the health and welfare of California residents, worker safety, or the state's environment.

Finally, the forgoing information also provides the factual basis for the Board's initial determination that the adoption of the additional proposed amendments to RTA chapters 2 through 5 will not have a significant adverse economic impact on business.

The additional proposed amendments to RTA chapter 2 through 5 may affect small business.